

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JADA MASON-RICHARDSON and U.S. POSTAL SERVICE,
REMOTE ENCODING CENTER, Gary, IN

*Docket No. 98-405; Submitted on the Record;
Issued August 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's disability compensation.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The factors that comprise the evaluation of medical evidence

¹ 5 U.S.C. § 8101 *et seq.*

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

include the opportunity for and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In this case, appellant's notice of occupational disease, filed on April 28, 1997 was accepted by the Office for carpal tunnel syndrome and ulnar nerve compression of her left hand, based on the reports of Dr. Joseph F. Schwartz, an orthopedic surgeon. Appellant, a data transcriber on a 359-day appointment, underwent surgery on July 16, 1997 and Dr. Schwartz released her to full duty on August 18, 1997.⁷

On September 4, 1997 the Office issued a notice of proposed termination of compensation on the grounds that the medical evidence established that appellant's disability had ceased. On October 7, 1997 the Office terminated appellant's compensation, noting that she did not respond to the notice within the allotted 30 days.

The Board finds that the medical reports of appellant's treating physician are sufficient to meet the Office's burden of proof in terminating disability compensation. Dr. Schwartz operated on appellant's left hand on July 16, 1997 and saw her on August 18, 1997 for follow-up treatment. He reported minimal swelling, mild tenderness and excellent wrist and digital range of motion. Dr. Schwartz stated that appellant was able to return to full-duty work.

Subsequently, Dr. Schwartz completed disability forms dated September 18 and October 6, 1997 releasing appellant to regular work. In a narrative report, Dr. Schwartz stated that appellant's incision had "healed nicely" and that she had excellent digital range of motion. He added that appellant agreed she could "live with the discomfort" and wore her wrist brace as needed.

Appellant argues that she has not fully recovered and still had a lot of problems with her left hand, but symptoms of pain, without clinical evidence of an injury or disability, are not compensable under the Act.⁸ Inasmuch as appellant's own physician concluded that she has no

⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

⁷ Appellant had stopped work on March 27, 1997 and was terminated at the end of her temporary appointment on July 27, 1997. She then found work in the private sector.

⁸ See *Rosie M. Price*, 34 ECAB 292, 294 (1982) (finding that the mere occurrence of an episode of pain during the workday is not proof of an injury having occurred at work; nor does such an occurrence raise an inference of causal relationship); *Max Haber*, 19 ECAB 243, 247 (1967) (same).

continuing disability caused by the accepted conditions, the Office met its burden of proof in terminating compensation.⁹

The October 7, 1997 decision of the Office of Workers' Compensation Programs is affirmed.¹⁰

Dated, Washington, D.C.
August 19, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁹ See *Wanda E. Mainsonet*, 48 ECAB ____ (Docket No. 94-2466, November 29, 1996) (finding that the Office met its burden of proof in terminating appellant's compensation after her treating physician reviewed videotapes of her daily activities and concluded that appellant was capable of doing her usual and customary work full time despite the work-related aggravation of her facet arthritis in her back).

¹⁰ The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Inasmuch as appellant filed his notice of appeal on October 27, 1997, the only decision before the Board is that dated October 7, 1997. Thus, the Office's May 6, 1998 decision denying appellant's request for an oral hearing as untimely filed is not before the Board; see *Douglas E. Billings*, 41 ECAB 880, 893 (1990) (finding that the Office had jurisdiction to issue a decision on a matter unrelated to the issue on appeal before the Board).